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February 22, 2012

The Honorable Jerome Horton
Chairman, Board of Equalization
450 N Street, MIC:72
Sacramento, California 95814

Re: *Western States Petroleum Association v. State Board of Equalization*
(January 19, 2012) Court of Appeal, Second Appellate District,
Case No. B225932

Dear Chairman Horton:

I write on behalf of Contra Costa County regarding *Western States Petroleum Association v. State Board of Equalization*, which invalidates State Board of Equalization Rule 474. In finding Rule 474 invalid, the *WSPA* court errs in ruling that it conflicts with Revenue and Taxation Code section 51. Unfortunately, the court's error may result in significant financial losses for our county. For these reasons, we respectfully request that you seek review of the *WSPA* decision.

State Board of Equalization Rule 474 provided that all the components of a refinery should be valued together, unless a contrary factual showing is made. The State Board of Equalization enacted Rule 474 to advance accurate assessment of refinery properties by using a market-based approach. In examining market conditions, the State Board of Equalization determined that refineries do not generally sell fixtures and equipment independently from land and improvements. Rather, an operating refinery is typically sold as a single operating unit consisting of land, improvements, fixtures and equipment.

Prior to the enactment of Rule 474, refinery representatives had maintained that refinery fixtures and equipment should be assessed separately from the land and improvements. Valuing land and improvements separately from fixtures and equipment

means that declines in the assessed value of equipment and machinery due to depreciation are not offset by gains in the value of land and improvements. The effect of valuing these components separately is to reduce the overall taxable value of a refinery.

After the enactment of Rule 474 on January 1, 2007, the Western States Petroleum Association ("WSPA"), a trade association that represents petroleum refining and exploration companies, brought suit claiming that Rule 474 was invalid for multiple reasons. After the superior court ruled in favor of WSPA, the State Board of Equalization appealed the decision to the court of appeal, resulting in the *WSPA* decision.

The *WSPA* decision is flawed in its analysis of whether Rule 474 conflicts with the statutory language of Section 51 of the Revenue and Taxation Code. Section 51 provides, in part, that where "persons in the marketplace commonly buy and sell [a type of property] as a unit", the taxable value of the property should be determined by valuing the property as a single unit. Rev. & Tax. Code § 51(d). Thus, Revenue and Taxation Code section 51 appears to be in accord with Rule 474, because the State Board of Equalization relied on evidence that refineries are typically valued as one unit in enacting the rule. In fact, one of the three justices who decided the case wrote a concurring opinion in which he states that Rule 474 appears to be consistent with Revenue and Taxation Code section 51. Nevertheless, the majority of the *WSPA* decision disregards the language of the Revenue and Taxation Code section 51, subdivision (d), which looks to the marketplace to determine how a property should be valued, and relies on the less persuasive legislative history.

Moreover, the decision's conclusion that land and improvements must be valued separately from machinery and equipment logically cannot be applied to properties, such as petroleum refineries, which generally are valued by the income approach. The income approach examines the projected earnings from a property to determine its value. Under this approach, all components of the property contribute to a single projected income. Rationally, machinery and equipment cannot contribute to income without the land on which they rest and, conversely, land cannot produce income without the attached machinery and equipment. Thus, the *WSPA* decision forces a result that is inconsistent with other rules of property taxation concerning application of the income approach in assessing the value of an income producing property.

Finally, Contra Costa County, as a county and subdivision of the government of the State of California, is responsible for addressing and meeting the governmental requirements of its citizens, residents and taxpayers. As part of its functions, the County raises revenues from property taxes, including the taxation of residential, commercial and industrial properties within the County. These properties include not only four petroleum refineries, but also dozens, if not hundreds, of properties whose property tax liability may be needlessly subject to dispute based on the majority opinion rejecting the market-based

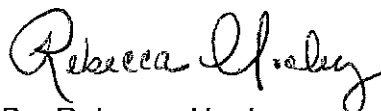
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approach to valuation provided by Revenue and Taxation Code section 51. For these reasons, we urge you to seek review of the *WSPA* decision.

Thank you for your consideration.

Very truly yours,

Sharon L. Anderson
County Counsel

A handwritten signature in cursive script, appearing to read "Rebecca Hooley".

By: Rebecca Hooley
Deputy County Counsel

Cc: Members of the State Board of Equalization (Ms. Yee, Mr. Runner, Ms. Steel,
Controller Chiang)
Kristine Cazadd, Executive Director, State Board of Equalization